Remarks:

Reconsideration of the application is requested.

Claims 1-13 remain in the application. Claims 1-3, 5 and 6 have been amended.

More specifically, claim 1 has been amended in view of the Examiner's rejection thereof under 35 U.S.C. § 112. The amendment responds directly to the Examiner's objections concerning the terminology used in the claims, namely the expression "technological properties" and the expression "spatially shaping." The intent underlying the first of these expressions was that one should adjust the sugar content to above 23% or one should use an "equivalent" amount of a sugar substitute. The equivalence, here, is defined in technological terms which include the parameters malleability and shapeability of the product as it is still in its heated state. As follows clearly from the specification, the high sugar content (and the equivalent sugar substitute) enable the product when it is still hot to be shaped and molded even after it has been baked. The advantage, as described, is that the production process includes baking in a simple strip process without providing complicated and small batch production molds inside the baking chamber. Instead, it is now possible to form the product into shape after the wafer strips

have left the baking chamber and after the wafers and the food product have been layered into a substantially finished product.

The second expression, namely "in a hot state" has been replaced by the term "elevated temperature." While the expression is not found verbatim in the original application, it is clear that what was meant with the "hot state" is an elevated temperature relative to ambient temperature. It is understood that the Examiner objected to "hot state" as being an absolute indicator without providing a defined range for "hot." The new expression "elevated temperature" is a relative expression and it is defined by ambient temperatures, so that the metes and bounds of the claimed invention are easily determined. As explained throughout the specification, it is only important that the layered food product be shaped while it is still in the enclosed and heated system after having left the baking chamber per se. We will return to this point in the discussion of the prior art.

The dependent claims have been adapted to the changes to claim 1 as well. Furthermore, claim 5 has been clarified in that the cutting step has been temporally assigned its sequential position after the pressing step.

The term "shaped" has been retained, while the modifier "spatially" has been deleted. The term "shaped" in this context is a three-dimensional shaping as it is abundantly clear from the specification and the claims. It goes without saying that the term "shaped" is not limited and should not be read exclusively on a two-dimensional shaping. In addition, the claims define the process of "cutting" which would be comparable or would connote a "cookie-cutting" process. That is, cutting as used herein connotes a two-dimensional severing, while the term "shaping" connotes a three-dimensional forming.

It is believed that the specification and the claims meet the requirements of 35 U.S.C. § 112, first and second paragraphs. Should the Examiner find any further objectionable items, counsel would appreciate a telephone call during which the matter may be resolved.

We now turn to the art rejection, in which claims 1-3, 5 and 6 have been rejected as being obvious over a combination of Wolf with Biggs et al. under 35 U.S.C. § 103. We respectfully traverse on the basis of the amended claims. .

Wolf deals with the production of closed filled wafer strips. Wolf's contribution to the art was in that he proposed a

production in which standard shaped wafer sheets were placed on top of one another such that the abutment seams would not align with one another and such that a substantially continuous layer sandwich would be produced that could be cut in any shape. Wolf's problem was that

> the possibility of carrying these suggestions into practice depends on the answer to the question whether the wafer strips thus produced are actually of a truly uniform thickness, whether said strips can be cooled down without more than a minimum number of cracks being formed in them, and whether it is possible, upon the occurrence of shrinkage cracks which cannot be completely avoided in practice, to prevent those portions of a wafer strip between which a crack has formed from being pushed one on top of the other.

Wolf, col. 1, lines 40 to 50.

With the sheets abutting one another in a planar layer, the sheets were coated and care was taken not to disturb the proper abutment of the individual sheets. As explained by Wolf, it was important that

> the joints between adjacent sheets or panels in the upper wafer layer should be off-set both longitudinally and transversely or at least either longitudinally or transversely in relation to the points between the sections of panels in the lower wafer layer.

Wolf, col. 2, lines 31 to 36.

The filling material (food product in our claims) served to establish a bond between the layers and the adhesion provided by the filling material was sufficient to retain the wafer

sheets on one another. At that point, the wafer layers or the wafer sandwich was subjected to cutting.

In order to provide uniform thickness and a carefully shaped product, Wolf explained that

> Under certain circumstances it may, of course, be necessary or desirable to equalize the thickness of the filled wafer strip by suitable pressing means in the form, for example, or rollers or belts, this equalizing action also tending uniformly to distribute the filling material between the wafer layers.

Wolf, col. 2, lines 46 to 51.

In the exemplary embodiment, Wolf explains that the

> filled wafer strip is passed under an equalizing roll 4 which compresses the entire strip to the desired final thickness while at the same time distributing the filling material over the entire wafer surface.

Wolf, col. 3, lines 17-21.

The instantly claimed invention provides for a similar process in which wafer sheets are baked, they are transported out of the baking oven, they are layered and provided with a food product (filing material in Wolf), and then they are (1) compressed and (2) shaped. Subsequently, as recited in claims 4 and 5, the larger sheets are cut into individual food products.

The Examiner has apparently read the "rolling" disclosed by Wolf on the pressing and shaping steps recited in claim 1. While the analogy or the similarity is appreciated, there exists a quite considerable diffrence between the rolling or other pressing provided by Wolf and the claimed separate steps provided by applicants. In light of the fact that the claims have been revised to emphasize the separate processing intended by "compressing" and "shaping," it is believed that Wolf has been removed in this regard. Wolf's rolling is at most a pressing action which is provided to smooth the layer sandwich and to equalize the distribution and the thickness of the food product inside the wafers. It is highly unlikely that the wafer sheets themselves are shaped during the rolling action because the wafer sheets have already been baked and, since the sugar content is likely very low in the context of Wolf, these wafer sheets are rather brittle and can no longer be shaped. The fact that the rolling of Wolf is effected while the product is still at an elevated temperature is to assure that the food product -- such as malleable chocolate or the like -- can be properly distributed.

This brings us to the secondary reference Biggs et al., where it is explained that the sugar content defines the malleability of the wafer sheets. While it would be possible, technologically, to combine Wolf with Biggs et al., it would appear that a rolling of a still malleable wafer sheet (the

wafer sheet of Wolf would be soft at a sugar content as provided by Biggs et al.) would lead to a compressed and hardened flat product which would be unacceptable as a confectionary food product. Wolf is only able to roll and distribute the inside food product because the wafer sheets are already baked and hard. In fact, were the wafer sheets soft and malleable, the food product would not be laterally distributed, but instead, pressed into the wafer sheet. Biggs et al. leaves the wafer sheet soft so that it can be formed around the food product. The two references, i.e. the teachings thereof, are rather incompatible in realistic terms, because the resulting food product would not be a proper such product.

The claims of the instant application define two separate steps which are not disclosed or even obvious from the references of record. There is nothing in the art of record which would suggest compressing a sandwich of wafer sheets and food product to form a preliminary stack and then to shape the preliminary stack into its final shape. The advantages obtained with the claimed process are clearly explained in the specification and none of the references, whether taken alone or in combination provide any such advantages. It is therefore believed to be clear that claim 1 is patentable over the art of record.

In view of the foregoing, reconsideration and allowance of claims 1-13 are solicited.

Respectfully submitted,

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November 7, 2002

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Marked-Up Version to Show Changes Made:

Claim 1 (amended). A method of producing a wafer product, which comprises:

outputting a first wafer sheet with a sugar content of at least 23% or an equivalent content of a [substance having the same technological properties as sugar] sugar substitute from a baking oven at an elevated temperature;

applying to the first wafer sheet, while the first wafer sheet is [in a hot state] at the elevated temperature, a layer of a food product;

providing a second wafer sheet with a sugar content of at least 23% or an equivalent content of a [substance having the same technological properties as sugar] sugar substitute, and placing the second wafer sheet, while the second wafer sheet is [in a hot state] at the elevated temperature, on the first wafer sheet; and

subsequently compressing the first and second wafer sheets and [spatially] shaping the first and second [hot] wafer sheets containing the layer of the food product at the elevated temperature.

Claim 2 (amended). The method according to claim 1, which comprises placing onto the first wafer sheet [a] the food

product selected from the group consisting of a confection, meat product, fish product, cheese product, fruit product, vegetable product, nuts, and almonds.

Claim 3 (amended). The method according to claim 1, wherein the [substance having the same technological properties as sugar] sugar substitute is trehalose.

Claim 5 (amended). The method according to claim 1, which comprises, subsequent to the pressing step, cutting the [spatially] shaped wafer product into individual wafer products and providing the individual wafer products with an outer coating.

Claim 6 (amended). The method according to claim 1, which comprises processing, together with the first and second wafer sheets, additional [hot] wafer sheets at the elevated temperature with interposed layers of food products.